

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

LA.App..No. 1646 of 2002(B)

LAR.13/1999 of SUB COURT, OTTAPPALAM
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APPELLANT: RESPONDENT

STATE OF KERALA.

BY GOVERNMENT PLEADER SMT. K.R.DEEPA

RESPONDENTS: CLAIMANTS

1. VIJAYAN, KALATHIL KANDAMKUNNATHU
QUARTERS, ROOM NO.4, CHANTHAPADI, THRITHALA
2. VANAJA, W/O. VIJAYAN,
KANDAMKUNNATHU QUARTERS, ROOM NO.4,
CHANTHAPADI, THRITHALA.

BY ADV. SRI.P.CHADRASEKHAR

THIS LAND ACQUISITION APPEAL HAVING COME UP FOR ADMISSION
ON 25/09/2007 ALONG WITH LAA NO. 1619 OF 2002 & LAA NO. 1649 OF 2002,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.Nos.1646, 1619 & 1649 of 2002

Dated: September 25, 2007

JUDGMENT

Harun-UI-Rashid, J.

The above appeals are filed by the State of Kerala against the judgment and decree in LAR Nos.13/1999, 15/1999 and 16/1999 on the files of the Sub Court, Ottapalam. The properties involved in the said references were acquired for the construction of Velliyamkallu Regulator-cum-Bridge at Thrithala, Block II. S.4(1) notification was published on 17.11.1998. The extent of property acquired in LAR No.13/99 is 0.0849 hectare of garden land comprised in Pattithara village of Ottapalam taluk. The extent of land acquired in LAR No.15/1999 is 0.2000 hectares of land classified as single crop wet land. The extent of land acquired in LAR No.16/99 is 0.2469 hectare of garden land in the same village. In LAR No.15/1999 the land acquisition officer awarded compensation at the rate of Rs.10,000/- per cent towards land value. In LAR Nos.13/99 and 16/1999 the Land Acquisition Officer fixed the land value at Rs.7018/- per cent.

2. The property involved in LAR No.15/1999 is touching the Thrithala - Kumbidi P.W.D. Road. The claimant has claimed land value at the rate of Rs.25000/- per cent relying on Ext.A1 document and commissioner's report. The land value in Ext.A1 document is at the rate of Rs.25000/- per cent for an extent of 12.44 cents of land. Exts.C1 to C6

are the reports and plans submitted by the commissioner. In Ext.C4 report the commissioner has suggested land value for the acquired property at the rate of Rs.20,000/- per cent in LAR No.15/1999. The commissioner deposed before the court that the property covered by Ext.A1 document has got more commercial importance than the acquired property and that Ext.A1 land is situated about 1 km. away from the acquired property. The property covered by Ext.A1 is located in Aloor junction and that at present there is a shopping complex in the property covered by Ext.A1 document. The court below held that since the commissioner suggested higher value mainly based on Ext.A1 document, the land value suggested in Ext.C4 report cannot be accepted since both properties are not similar and comparable. At the same time, the court below found that the acquired land in LAR No.15/1999 has got commercial and locational importance and its potential value in comparison with Ext.B2 document is high and therefore the value adopted by the Land Acquisition Officer is inadequate. At the same time, the court took into account the importance of the acquired property and its location touching Thrithala - Kumbidi main road and fixed the land value at the rate of Rs.14,000/- per cent.

3. The properties involved in LAR Nos.13/99 and 16/99 are not having P.W.D. road frontage. At the same time, those properties are situated behind the property involved in LAR No.15/99. Considering the location of the acquired property and its proximity to important institutions

and its potential value, the court below fixed Rs.10,000/- per cent for the properties involved in LAR Nos.13/99 and 16/99. The reasons stated based on the evidence in support thereof for granting enhancement as stated above is fair and reasonable. We are of the view that the fixation of land value for the acquired lands at the said rates is just and fair.

4. The court below also considered the value fixed towards compensation for the structures in the property. The court below found that the officials have valued the building on the basis of the schedule of rates notified during 1996 and that sec.4(1) notification was published on 21.12.1999. The court also noticed that Ext.A2 document reveals that during 1998 the Government had allowed enhancement of 50% of the existing rates for awarding tenders for the construction of buildings and it is also noted that the rates noted in Exts.X2 and X3 reveal that there is considerable increase in the schedule of rates in 1999 in comparison with the schedule of rates in 1996. In the circumstances, considering the increase in the cost for construction and the increase in the value of building materials as revealed from Exts.X2 and X3, the court below has rightly found that the value awarded by the Land Acquisition Officer for the structures in the acquired property in LAR No.13/1999 is highly inadequate and that the claimants are entitled to get 45% in excess of the value awarded by the Land Acquisition Officer towards the value of structures in the acquired land. For the same reasons, relying on Exts.A2, X2 and X3,

L.A.A.1646, 1619 & 1649 of 2002

Page numbers

the court below held that the claimants in LAR No.16/1999 are entitled to get 35% in excess of the value shown in the award towards the value of the structures in the acquired property. The enhancement of compensation given at the rate of 45% for the value of the structures involved in LAR No.13/99 and 35% in LAR No.16/1999 are granted based on the evidence adduced which are positive materials to be relied on. We find no reasons to interfere with the judgment and decree under appeals. Therefore, these appeals are dismissed.

**KURIAN JOSEPH
JUDGE**

**HARUN-UL-RASHID
JUDGE.**

L.A.A.1646, 1619 & 1649 of 2002

Page numbers

C.M.P. 2057 OF 2003
IN
L.A.A. 1646 OF 2002
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DISMISSED

25.9.2007.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE.

mt/-

L.A.A.1646, 1619 & 1649 of 2002

Page numbers

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

L.A.A.1646, 1619 & 1649 of 2002

JUDGMENT

25.9.2007